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SECRETARY OF STATE

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF)	DIVISION OF WATER
)	POLLUTION CONTROL
CITY OF MADISONVILLE)	
)	CASE NO. 06-129D
)	DOCKET NO. 04.30-097088A
)	WPC06-129D
RESPONDENT)	

AGREED ORDER

This case came before the court as a proposed Agreed Order. The agreement of the parties to these findings is indicated by their respective signatures, set out at the end of this order. After a review of this matter, the Board concurs with this proposed Order. Whereupon, this Board makes the following Findings of Fact, Conclusions of Law and Orders and Assesses as follows:

FINDINGS OF FACT

1. The Board adopts in its entirety as its Findings of Fact, those Facts set out in the Director's Order, incorporated herein by reference, attached.

CONCLUSIONS OF LAW

2. The Board adopts in its entirety as its Conclusions of Law, those findings set out as Violations in the Director's Order, incorporated herein by reference, attached.

ORDER AND ASSESSMENT

Whereupon, the Board Orders and Assesses as follows:

1. The Respondent shall, within 180 DAYS of receipt of this ORDER and ASSESSMENT, submit for approval by the division a corrective action plan/engineering report (CAP/ER) on the system. The CAP/ER shall include, but shall not be limited to, modifications to equipment or operations necessary to comply with all provisions of the subject NPDES permit and a project schedule including timetables for beginning and completing all activities. The Respondent shall submit the CAP/ER in duplicate to the manager of the division's Environmental Field Office in Knoxville (EFO-K) at Suite 220 State Plaza, 2700 Middlebrook Pike, Knoxville, Tennessee 37921, and to the manager of the Enforcement and Compliance Section of Water Pollution Control at 401 Church Street, 6th Floor L&C Annex, Nashville, Tennessee 37243.
2. The Respondent shall, within NINETY DAYS of receipt of the division's written approval, initiate the actions outlined in the CAP/ER, including those items required by the division as comments in the approval of the CAP. At the time of first action on the CAP/ER, the Respondent shall notify the division in writing of the action. This written notification shall be submitted in duplicate to the manager of the EFO-K and to the manager of the Enforcement and Compliance Section of Water Pollution Control at the respective addresses in Item 1.
3. All scheduled activities in the approved CAP/ER shall be complete by December 31, 2011. A notice of completion should be sent to the manager of the EFO-K and to the

manager of the Enforcement and Compliance Section at the respective addresses in Item no. 1. The notice of completion will be considered late if not received by the Division on or before March 1, 2012.

4. Within NINETY DAYS of receipt of this Order, the Respondent shall submit to the division, a sewer overflow response plan (SORP). The SORP shall include procedures for minimizing health impacts and shall include measures to be taken when overflows discharge on local streets or other public areas. The SORP shall also include appropriate measures for the notification of affected property owners and stream users, and shall include notification of the news media when necessary to protect public health. The SORP shall state specific procedures for notifying known downstream users in the event that untreated wastewater is discharged to waters of the state by sanitary sewer overflow (SSO). These procedures shall include, but not be limited to, provisions for posting warning signs at places where the general public could gain access to polluted waters. Further, posted signs shall remain in place until in-stream monitoring reveals that the water body has returned to normal background conditions. In the event that the division requires the Respondent to modify/revise the SORP, the Respondent shall submit the modified/revised SORP to the division within thirty days of the date of notification. The SORP shall be submitted to the EFO-K and a copy to the manager of the Enforcement and Compliance Section at the respective addresses in Item 1.

5. Within 120 DAYS of written approval by the division, the Respondent shall fully implement the SORP. The Respondent shall notify the division, in writing, once the SORP has been fully implemented. The notification shall be submitted to the EFO-K and

a copy to the manager of the Enforcement and Compliance Section at the respective addresses in Item 1.

6. Within 180 days of receipt of this Order, the Respondent shall revise or develop, and submit to the division for review and comment, the following Maintenance Operation and Management (MOM) programs as identified in subparagraph 6.vii., below. The revised programs shall be submitted to the EFO-K and a copy to the manager of the Enforcement and Compliance Section at the respective addresses in Item 1. Each individual MOM program will have a sufficient level of documentation to assure the following:

- i. The program is specific to, and tailored for, the utility's infrastructure;
- ii. The program has a written purpose explaining why the program is needed;
- iii. The program has specific written goal(s) establishing the accomplishment(s) desired for the current fiscal year;
- iv. The program has the details of the activities and procedures that are followed to implement the program written down in the form of Standard operating procedures that are used by the utility's personnel;
- v. The program has established appropriate performance procedures which are tracked by management; and
- vi. The program has a written procedure requiring periodic review, evaluation, and any necessary revision.
- vii. The following programs have been identified by the division as significant with respect to Madisonville and are in need of development or revision. Any revisions to existing programs must account for specific concerns, which the

division may have identified below. All newly developed programs and revised programs shall meet the narrative criteria identified in 6.i. through 6.vii. above.

- a. Sewerage Assessment Priority Parameters Program
- b. Routine Manhole Inspection Program
- c. Flow Monitoring Program to Support Engineering Studies
- d. Closed Circuit Television (CCTV) Program to Support Sewer Assessment
- e. Gravity System Defect Analysis Program
- f. Smoke Testing Program
- g. Gravity Lines Rehabilitation Program
- h. Manhole Rehabilitation Program
- i. Scheduled Pump Stations Operations Program
- j. Emergency Pump Station Operating Program
- k. Grease Control Program
- l. Mechanical Maintenance Program
- m. Capital Improvement Program
- n. Work Order and Complaint Management Program
- o. System Inventory Program
- p. Capacity Assurance Program for New Connections
- q. Long-Term Capacity Assurance Protocols

7. The Respondent shall submit an annual report detailing all updates and changes to any of the individual MOM programs. Each annual report shall be due on March 31st and shall be based upon the activities conducted in the previous calendar year. The first annual report shall be submitted on March 31, 2010, for the 2009 calendar year. The annual reports shall be submitted to the EFO-K and a copy to the manager of the Enforcement and Compliance Section at the respective addresses in Item 1. Each annual report shall also include the following:

- i. A completed system profile and performance summary as outlined in Exhibit A;

- ii. A completed system-wide MOM programs recent performance summary as outlined in Exhibit B;
- iii. A completed sub-basin summary statistics summary spreadsheet as outlined in Exhibit C;
- iv. A five year capital improvement program with projected budgets for each item;
- v. A narrative description of the status of all contracted wastewater improvement projects, all in house replacement and rehabilitative projects, and the funding status of all improvement projects; and
- vi. Appropriate maps and any additional documents necessary to fully describe the system status and aid in review.

8. Within 1 year of receipt of this Order, the Respondent shall maintain the capacity, collection, and treatment evaluation protocols. These protocols shall include, but not be limited to, standard design flow rate assumptions (regarding pipe roughness, manhole head losses, “as-built” drawing accuracy [distance and slope], and water use [gallons per capita per day]), and projected flow impact modeling/calculation techniques. The program shall provide for certification of adequate capacity by a registered professional engineer. The program shall include an information management system for tracking the cumulative studies and relating studies to the infiltration/inflow reduction program.

9. The Respondent is hereby assessed a CIVIL PENALTY in the amount of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)**, payable as follows:

- viii. The Respondent shall, within THIRTY DAYS of receipt of this Order and Assessment, pay to the division **FIVE THOUSAND DOLLARS (\$5,000.00)**

- ix. The Respondent shall, within THIRTY DAYS of default, pay to the division **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** if, and only if, the Respondent fails to comply with Item 1, above.
- x. The Respondent shall, within THIRTY DAYS of default, pay to the division **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** if, and only if, the Respondent fails to comply with Item 2, above.
- xi. The Respondent shall, within THIRTY DAYS of default, pay to the division **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** if, and only if, the Respondent fails to comply with Item 3, above.
- xii. The Respondent shall, within THIRTY DAYS of default, pay to the division **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** if, and only if, the Respondent fails to comply with Item 4, above.
- xiii. The Respondent shall, within THIRTY DAYS of default, pay to the division **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** if, and only if, the Respondent fails to comply with Item 5, above.
- xiv. The Respondent shall, within THIRTY DAYS of default, pay to the division **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** if, and only if, the Respondent fails to comply with Item 6, above.
- xv. The Respondent shall, within THIRTY DAYS of default, pay to the division **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** if, and only if, the Respondent fails to comply with Item 7, above.

xvi. The Respondent shall, within THIRTY DAYS of default, pay to the division **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** if, and only if, the Respondent fails to comply with Item 8, above.

10. Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of thirty days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

REASON FOR DECISION

The Board makes the above findings supported by a preponderance of the evidence. The Board's findings and Order are reasonable, consistent with the Act and the Rules and the purposes thereof, and promotes the public welfare. The assessment is reasonable and fair in light of the circumstances of this case.

The Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Entered in the Office of the Secretary of State, Administrative Division on
this 27th day of November.

Thomas G. Stovall
~~Charles Sullivan, Director~~ Thomas G. Stovall
Administrative Procedures Division

CERTIFICATE OF SERVICE

This is to certify that a copy of the above Agreed order was mailed by certified
mail to:


Mayor Alfred McClendon
City of Madisonville
4500 College Street
Madisonville, TN 37354

This 27th day of November '07


Robert Cox
Robert N. Cox BPR #012893
Assistant General Counsel
Tennessee Department of Environment
and Conservation
Office of General Counsel
401 Church Street, 20th floor
Nashville, Tennessee 37243-1548
Phone: (615) 532-0140


102107

This _____ day of _____, 2007.


Chairperson
Tennessee Water Quality Board

Seen/Agreed:


E. Jerome Melsom
Gentry, Tipton & McLemore
Attorney for the City of Madisonville


Robert Cox
Attorney for Tennessee Dept. of Environment and Conservation

RIGHTS OF APPEAL

The Parties are hereby notified and advised of their right to administrative and judicial review of this FINAL ORDER, pursuant to the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated §§4-5-317 and 4-5-322 and the Tennessee Water Quality Control Act, Tennessee Code Annotated §69-3-101 *et seq.*

Tennessee Code Annotated §4-5-317 gives any party the right to file a Petition for Reconsideration within fifteen (15) days after the entry of a FINAL ORDER, stating specific grounds upon which relief is requested.

Tennessee Code Annotated §4-5-322 and §69-3-101 *et seq.* provide any party the right to judicial review by filing a Petition in the Chancery Court of Davidson County within sixty (60) days of this ORDER becoming effective. This FINAL ORDER shall become effective upon entry.